

Management Alert



California Supreme Court Endorses Favoritism For Union Trespassers

California has enacted special labor laws that make it nearly impossible for employers to obtain injunctions against union trespass. This content-based favoritism for one form of speech raises constitutional questions, as federal courts have recognized. On December 27, 2012, however, in *Ralphs Grocery Co. v. United Food & Commercial Workers Union Local 8*, the California Supreme Court upheld these laws against constitutional challenge. In doing so the court reversed a sensible 2010 decision by the Court of Appeal, which had struck down the laws on the basis that they, in giving unions the right to picket on privately owned walkways fronting retail store entrances, were unconstitutionally favoring labor speech over non-labor speech.

The Facts

In 2007, UFCW unions pickets arranged themselves on a private walkway fronting the entrance of a Ralphs grocery store. The pickets encouraged people to boycott Ralphs because its employees were not represented by a union. In 2008, after unsuccessfully seeking the assistance of the local police, Ralphs sued the UFCW for an injunction against its trespass. The UFCWs defended itself by citing the Moscone Act (Cal. Code Civ. Proc. § 527.3) and Labor Code section 1138.1. The Moscone Act aims to promote worker rights to the collective bargaining process and to reduce judicial interference in labor disputes by providing that certain labor-dispute activities cannot be enjoined. The protected activities include “peaceful picketing or patrolling involving any labor dispute.” Labor Code Section 1138.1 applies where the Moscone Act does not, prohibiting injunctions unless the victim of picketing overcomes various onerous procedural hurdles. These two statutes work together to insulate union activity from the state trespass laws that apply to people generally.

Procedural Posture

The trial court held the Moscone Act to be unconstitutional as impermissible content discrimination, but upheld Section 1138.1 and found that Ralphs had failed to satisfy the requirements of 1138.1. The court thus denied the request for an injunction.

The Court of Appeal reversed. It first rejected the UFCW’s argument that a private entrance to a retail store was a public forum afforded protection under the California Constitution—as “‘the entrance area and apron’ of the store ‘were not designed and presented to the public as public meeting places.’” Therefore, Ralphs could regulate speech on its property. The Court of Appeal then struck down both the Moscone Act and Section 1138.1, because they give speech regarding labor disputes greater protection than speech involving other subjects and thus are unconstitutional under the free-speech guarantee of the First Amendment and the equal- protection guarantee of the Fourteenth Amendment.

The Supreme Court Ruling

The California Supreme Court agreed with the Court of Appeal that the privately-owned walkway fronting the Ralphs customer entrance was not a public forum giving pickets free-speech protections under the California Constitution. The Supreme Court relied on the *Robins v. Pruneyard* decision, which held that the public forum portion of a privately-owned

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shopping center is limited to those common areas designed to facilitate and encourage congregation and socialization.

The Supreme Court then declared that although the UFCW could not invoke constitutional protections to justify its picketing, the UFCW could invoke the statutory protections provided by the Moscone Act and Section 1138.1. In this analysis, the Supreme Court reviewed its earlier decisions on both the legality of peaceful picketing on private walkways as a matter of labor law and the perceived lack of necessity for judicial interference to protect an employer's property rights.

The Supreme Court upheld both labor laws in question, concluding that the Court of Appeal had relied on inapplicable precedent involving laws that restricted speech in public forums. The Supreme Court reasoned that neither the Moscone Act nor Section 1138.1 abridges speech—as invalidating them would not remove any restrictions on speech—and the speech in question took place on privately-owned sidewalks.

The Supreme Court acknowledged that content-based speech regulations may be permissible if enacted for legitimate concerns unrelated to disagreement with the message. Here, the labor laws allowing picketing on private sidewalks are “justified by the state’s interest in promoting collective bargaining to resolve labor disputes, the recognition that union picketing is a component of the collective bargaining process, and the understanding that the area outside the entrance of the targeted business is ‘the most effective point of persuasion.’” For support, the Court cited other laws protecting labor-related speech in the context of economic regulations, and U.S. Supreme Court decisions that “support the proposition that labor-related speech may be treated differently than speech on other topics.”

The six-justice majority opinion was authored by Justice Kennard, while Justice Chin both concurred and dissented. There were also two separate concurring opinions. Chief Justice Cantil-Sakauye, concurring, relied on the portion of the Moscone Act that proscribes unlawful conduct—such as breach of the peace, disorderly conduct, and blocking of ingress and egress—to stress that the Moscone Act and Section 1138.1 do not protect union conduct that involves violence or aims to harm businesses by using tactics that go beyond “persuasion of patrons to labor’s position.” She stated that the laws do not protect the use of signs larger than necessary or activity that occurs inside the premises. The Chief Justice also emphasized that because the Moscone Act is to be construed with the purpose of limiting judicial interference, intervention of law enforcement will be necessary to address unlawful conduct.

In a separate opinion, Justice Liu agreed with the Chief Justice’s view that law enforcement officials may have to intervene in the event of unlawful union conduct, but disagreed with some of her examples regarding conduct that might not be protected. The dissent by Justice Chin noted problems with the majority’s constitutional analysis, and expressed concern that the California Supreme Court was setting itself on a collision course with the federal courts.

What *Ralphs* Means For Employers

Unless overruled by the U.S. Supreme Court, the *Ralphs* decision means that it is nearly impossible for California employers to obtain injunctions against union trespassers on their private property, unless the union pickets engage in unlawful activity, such as blocking ingress and egress, or violence. The ruling does acknowledge, however, that employers may obtain law enforcement intervention and injunctions where unions engage in what the court has defined as unlawful activity. Employers seeking injunctions for unlawful activity, however, still must satisfy the procedural hurdles established by Section 1138.1.

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